

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-003-13-1-5-00172-16  
45-003-17-1-5-00769-18  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-14-127-036.000-003  
**Assessment Years:** 2013 & 2017

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 and 2017 assessments of his property located at 7004 W. 23<sup>rd</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential lot at \$13,600 for 2013 and \$11,500 for 2017.
2. Nowacki filed Form 131 petitions with the Board for both years and elected to proceed under our small claims procedures. On December 3, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by its Hearing Officers, Robert W. Metz and Joseph James. They were all sworn as witnesses.

**RECORD**

4. The official record for this matter includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.<sup>1</sup>

**BURDEN OF PROOF**

5. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the

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<sup>1</sup> Neither party offered any exhibits.

assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).

6. There was no change in the property's assessment from 2012 to 2013 or from 2016 to 2017. Nowacki bears the burden of proof for both years.

#### SUMMARY OF CONTENTIONS

7. Nowacki's case:
  - a. Nowacki acquired the property for \$26 at an auction attended by hundreds of willing and able bidders. He is not suggesting the property is worth \$26 but thinks a fair value is \$5,000, which is 200 times what he paid for it. *Nowacki testimony*.
  - b. Nowacki contends if the property had been worth the \$13,000 assessed value, the property owner could have sold it. Instead, she walked away from the property. *Nowacki testimony*.
  - c. Nowacki acquired the lot in 2009. The property record card shows he purchased the property in 2002 or 2003. This does not affect the valuation, but goes to the accuracy of the assessor's records and work. *Nowacki testimony*.
8. The Assessor's case:
  - a. The Assessor contends there is no market evidence to support a change in the assessments. The Assessor recommends no change for both years. *James testimony*.

#### ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the subject property's 2013 or 2017 assessments. The Board reached this decision for the following reasons:
  - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
  - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax

value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013 and 2017, the valuation dates were March 1, 2013 and January 1, 2017, respectively. Ind. Code § 6-1.1-2-1.5(a).

- c. Nowacki contends the property's 2013 and 2017 assessments should be \$5,000 but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013 or 2017, he failed to make a prima facie case for a lower assessment for either year. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the 2013 and 2017 assessment values.

ISSUED: February 11, 2019

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

James Nowacki  
7004 W. 23<sup>rd</sup> Avenue  
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**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.